

Claimant began working for respondent on March 12, 2004, as a chain hand on a drilling rig. Claimant testified he was able to do his regular duties without any problems and his back was fine. On April 26, 2004, claimant was lifting and pulling on a drill collar when he strained his low back on the right side. He experienced a sharp pain on the right side and hip. Claimant advised his supervisor, Jimmy Martin, that he had pulled something in his back while moving the drill collar and because of that he was going to the doctor the following day. Claimant also told two co-workers, Tory Ramiro and Ernesto Garcia, that he had hurt his back. Claimant continued working and finished the day.

On April 27, 2004, the claimant sought treatment with his family physician, Dr. Geoffrey B. Plumlee. Dr. Plumlee prescribed pain and anti-inflammatory medications as well as an epidural. Dr. Plumlee's medical record of that visit indicates a history that claimant "states was home (something illegible is crossed out) when started but has been working."¹ But claimant testified he did not tell the doctor the pain started at home, instead, claimant testified he stated it happened at work but that claimant wanted to pay for the treatment. Claimant noted a drilling crew would receive a cash bonus if no accidents were reported and he thought his back condition would improve with some pain medications.

After seeing Dr. Plumlee, the claimant went back to work but as he performed his job laying down drill collar subs the claimant experienced sharp pain to the point he could no longer lift the collars. Claimant asked his supervisor and was allowed to change jobs with a co-worker. Claimant's regularly scheduled days off were the following two days. On his first day off on April 28, 2004, claimant received the epidural steroid injection that Dr. Plumlee had prescribed.

The claimant testified that on April 30, 2004, his supervisor came by the house and had claimant sign his time card and then told claimant that he was fired. The claimant testified his supervisor told him that a co-worker had seen a scar on claimant's back and that it was respondent's policy that anyone who had back surgery could not work on a drilling rig.

On cross-examination, claimant admitted that when he had filled out a conditional job offer form he had not listed a history of back injuries, surgeries and workers compensation claims he had before seeking employment with respondent. Claimant also noted that the daily drilling report that he signed was further filled out by his supervisor regarding a mark in a box on the form which indicated that no accident occurred on April 27 or April 28.

Claimant agreed there is equipment used to move drill collars but he noted his supervisor had indicated that a good floor hand moved the collars by hand and that was how to get a daylight shift job. Lastly, claimant agreed he had ridden a motorcycle after

¹ P.H. Trans., Resp. Ex. 6.

the accident but he noted it was his only form of transportation and he rides to the grocery store.

Jerry R. Burns, a driller for respondent, testified claimant had called him and said he had been terminated but that his back was fine and that he wanted a job. Mr. Burns noted claimant indicated he was desperate for a job and needed the money. Mr. Burns also testified he had seen claimant riding his motorcycle and claimant did not appear to be in pain. Mr. Burns noted that it was company policy for an employee to sign and fill out the daily drilling report. Lastly, Mr. Burns testified that there is a machine to assist moving the drill collars because they weigh approximately 200 pounds.

Mark Galyon, respondent's president, testified respondent had a policy of accommodating injured employees. And that respondent would have provided claimant accommodated work but such accommodation was not offered claimant because of his failure to list previous injuries on job application forms.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.² "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."³

Respondent argues claimant is not credible. Initially, respondent notes claimant did not list prior injuries, surgeries and workers compensation claims on a conditional job offer form. Respondent next notes claimant alleged injury moving a drill collar that is only supposed to be moved by a machine and that daily drilling reports are supposed to be filled out by the employee. Lastly, despite his claims of back pain he was seen riding a motorcycle and had requested re-employment stating his back was fine. Respondent concludes the cumulative effect of the inconsistencies warrant a finding claimant has failed to meet his burden of proof that he suffered accidental injury arising out of and in the course of his employment.

Conversely, claimant noted he had already worked four days before he was asked to fill out the conditional job offer form and was further in a hurry to get the form filled out so he could get paid. Claimant testified his supervisor had indicated the way to advance to a day job was by moving the collars quickly as had another worker who performed the job by hand. Claimant further testified his supervisor filled out the daily drilling report for his employees. Claimant agreed that he rode a motorcycle because it was his only form of transportation but that he nonetheless experienced significant back pain.

² K.S.A. 44-501(a) (Furse 2000).

³ K.S.A. 2003 Supp. 44-508(g).

The respondent defended this claim by attacking claimant's credibility. The Board finds that where there is some conflicting testimony, as in this case, credibility of the witnesses is important. Here, the SALJ had the opportunity to personally observe the claimant and respondent's representatives testify in person. In granting claimant's request for medical treatment and temporary total disability benefits, the SALJ apparently believed claimant's testimony over the respondent's representatives. The Board concludes that some deference may be given to the SALJ's findings and conclusions because he was able to judge the witnesses' credibility by personally observing them testify.

It should be noted that claimant's supervisor did not testify nor did the co-workers claimant identified that he told of his injury on the day it occurred. Thus, claimant's testimony regarding how the accident occurred is not contradicted by any testimony. Moreover, claimant denied he told Dr. Plumlee that his pain started at home and the doctor's record does contain an illegible strikeout and a further notation claimant had been working. The Board concludes claimant has met his burden of proof to establish he suffered accidental injury arising out of and in the course of his employment and affirms the SALJ's Order.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁴

WHEREFORE, it is the finding of the Board that the Order of Special Administrative Law Judge Vincent L. Bogart dated July 1, 2004, is affirmed.

IT IS SO ORDERED.

Dated this 31st day of August 2004.

BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant
Matthew J. Schaefer, Attorney for Respondent and its Insurance Carrier
Vincent A. Bogart, Special Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁴ K.S.A. 44-534a(a)(2) (Furse 2000).